

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BRET WILLIAM ROSS,

Plaintiff,

v.

JASON BENNETT,

Defendant.

Case No. 3:24-cv-05573-TMC

ORDER ADOPTING REPORT AND
RECOMMENDATION

This Court, having reviewed the Report and Recommendation of Magistrate Judge Brian A. Tsuchida, objections to the Report and Recommendation, if any, and the remaining record, does hereby find and ORDER:

(1) The Court adopts the Report and Recommendation.

a. Petitioner has not filed any objections to the Report and Recommendation.

Petitioner did file, within the time for objections, a notice of supplemental authority citing *Erlinger v. United States*, 144 S. Ct. 1840 (2024). Construing this broadly as an objection, the Court has conducted de novo review of the Report and Recommendation. Fed. R. Civ. P. 72(b); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). For the reasons

1 explained in the Report and Recommendation, the Court agrees with Judge
2 Tsuchida that the petition is untimely and the asserted ground for relief lacks
3 merit. *Erlinger*, which dealt with the Armed Career Criminal Act (ACCA) and
4 whether certain facts related to the predicate convictions that expose a
5 criminal defendant to an enhanced statutory maximum under ACCA must be
6 found by a jury beyond a reasonable doubt, *see* 144 S. Ct. at 1846–48, does
7 not change this result. As Judge Tsuchida explained, Petitioner’s sentence was
8 within the statutory range set by the legislature. Dkt. 4 at 7–8.

9 (2) The petition is dismissed with prejudice.

10 (3) Petitioner’s other pending motions and requests (Dkts. 1-5, 5-2, 5-3, 5-4, 6) are
11 denied as moot.

12 (4) A certificate of appealability is denied.

13 (5) The Clerk is directed to provide a copy of this Order to petitioner and to the
14 Honorable Brian A. Tsuchida.

15 Dated this 13th day of August, 2024.

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18 Tiffany M. Cartwright
19 United States District Judge
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